

CHAPTER 11
COMPLAINTS—RULES OF PRACTICE AND
PROCEDURE BEFORE THE BOARD

[Prior to 6/15/88, see Professional Teaching Practices Commission[640] Ch 2]

[Prior to 5/16/90, see Professional Teaching Practices Commission[287] Ch 2]

282—11.1(272) Parties involved. The following definitions of parties involved in an investigation shall apply herein:

“*Board*” shall mean the board of educational examiners.

“*Complainant*” shall mean any qualified party as defined in 11.4(272) herein.

“*Respondent*” shall mean any individual(s) who shall be charged in a complaint with a violation of standards of professional ethics and practices.

282—11.2(272) Informal procedures. Matters which do not conflict with Iowa Code chapter 272 may be acted upon without a hearing and may be handled by correspondence.

11.2(1) Informal settlement—waivers. When a formal complaint has been filed under Iowa Code chapter 272 and rule 11.4(272), the board chair shall make a determination as to the possibility of an informal settlement conference between the parties. If it is determined that such conference is possible, the chair or designee shall give notice as to the time and place of such conference by ordinary mail or by telephone. The site of the conference shall be at a location suitable to the parties. Nothing in this rule shall be construed as requiring a party to participate in informal settlement procedures. An oral or written declination of informal settlement procedures constitutes a waiver of the provisions of this rule.

11.2(2) Voluntary surrender of license. When a formal complaint has been filed under Iowa Code chapter 272 and rule 11.4(272), the respondent may voluntarily surrender the license by admitting the truth of the allegations of the complaint and completing a waiver of hearing form provided by the board. The surrender shall result in the permanent revocation of the respondent’s license.

11.2(3) Telephone proceedings. The presiding officer or the presiding officer’s designee may resolve preliminary procedural motions by telephone conference in which all parties have an opportunity to participate. Other telephone proceedings, including hearings, may be held with the consent of all parties. The presiding officer or the presiding officer’s designee will determine the location of the parties and witnesses for telephone hearings. The convenience of the witnesses or parties, as well as the nature of the case, will be considered when location is chosen.

282—11.3(272) Jurisdictional requirements.

11.3(1) The case must relate to alleged violation of standards of professional ethics and practices.

11.3(2) The magnitude of the alleged violation must be adequate to warrant a hearing by the board.

11.3(3) There must be sufficient evidence to support the complaint.

11.3(4) As an additional factor, it should appear that a reasonable effort has been made to resolve the problem on the local level. However, the absence of such an effort shall not preclude investigation by the board.

282—11.4(272) The complaint.

11.4(1) Who may initiate.

a. Licensed practitioners employed by a school district or their educational entity or their recognized local or state professional organization.

b. Local boards of education.

c. Parents or guardians of students involved in the alleged complaint.

11.4(2) Form and content of the complaint.

a. The complaint shall be in writing and signed by at least one complainant or an authorized representative if the complainant is an organization. (Or an official form may be used. This form may be obtained from the board upon request.)

b. The complaint shall show venue as “BEFORE THE BOARD OF EDUCATIONAL EXAMINERS,” and shall be captioned “COMPLAINT.”

c. The complaint shall contain the following information:

(1) The full name, address and telephone number of the complainant.

(2) The full name, address and telephone number, if known, of the respondent.

(3) A concise statement of the facts which clearly and accurately apprise the respondent of the alleged violation of professional ethics and practices, and shall state relief sought by the complainant.

11.4(3) Required copies—place and time of filing.

a. In addition to the original, a sufficient number of copies of the complaint must be filed to enable service of one copy to each of the respondents and retention of 12 copies for use by the board.

b. The complaint must be delivered personally or by mail to the office of the board. The current office address is the Grimes State Office Building, Third Floor, Des Moines, Iowa 50319-0147.

c. Timely filing is required in order to ensure the availability of witnesses and to avoid initiation of an investigation under conditions which may have been significantly altered during the period of delay.

11.4(4) Amendment or withdrawal of complaint. A complaint or any specification thereof may be amended or withdrawn by the complainant at any time prior to notification of the respondent, and thereafter at sole discretion of the board.

11.4(5) Investigation of license reports.

a. Reports received by the board from another state, a territory or other jurisdiction concerning licenses or certificate revocation or suspension shall be reviewed and investigated by the board in the same manner as is prescribed in these rules for the review and investigation of written complaints.

b. Failure to report a license revocation, suspension or other disciplinary action taken by a licensing authority of another state, territory or jurisdiction within 30 days of the final action by such licensing authority shall constitute cause for initiation of an investigation.

282—11.5(272) Initial inquiry.

11.5(1) Investigation of allegations. In order to determine if probable cause exists for a hearing on the complaint, the chair or someone designated by the chair shall cause an investigation of the allegations of the complaint. In this regard, the person complained of shall be furnished a copy of the complaint and given the opportunity to informally present a position or defense respecting the allegations of the complaint. This position or defense may be submitted in writing, but a personal conference with the investigation official may be had as a matter of right upon request.

11.5(2) Investigation report. Upon completion of the investigation, the chair or designee shall prepare a report for the board's consideration which shall contain the position or defense of the respondent, discuss jurisdiction and set forth any legal arguments and authorities that appear applicable to the case. The report shall be concluded with a recommendation as to whether probable cause exists for further proceedings.

282—11.6(272) Ruling on the initial inquiry.

11.6(1) Decision of the board.

a. *Rejection.* If a determination is made by the board to reject the case, the complaint shall be returned to the complainant along with a statement specifying the reasons for rejection. A letter of explanation concerning the decision of the board shall be sent to the respondent.

b. *Requirement of further inquiry.* If determination is made by the board to order further inquiry, the complaint and recommendations by the investigator(s) shall be returned to the investigator(s) along with a statement specifying the information deemed necessary.

c. *Acceptance of the case.* If a determination is made by the board to accept the case, a formal hearing shall be conducted in accordance with 11.7(272) to 11.9(272) unless a voluntary informal waiver of hearing has been filed by the respondent pursuant to the provisions of subrule 11.2(2) and subrule 11.8(1), paragraph “g.”

11.6(2) Reserved.

282—11.7(272) Service of the complaint and answer.

11.7(1) *Service of the complaint.* The board or designee shall send a letter of notification and a copy of the complaint, with any amendments, to the respondent by certified mail with return receipt. Attached thereto shall be a statement that respondent has the right to appear at a hearing and be heard and to submit an answer of the type specified in 11.7(3), that an answer or appearance must be submitted within 20 days after receipt of the complaint, and that failure to do so shall be deemed consent to whatever action the board deems appropriate. Further, this statement shall notify the respondent that the board shall determine the date, time, and place of hearing and notify respondents of same upon receipt of the answer.

Whenever the notice of complaint by certified mail with return receipt cannot be delivered to the respondent, because the educator refuses to receive the mail, notice shall be given by publication in a newspaper of general circulation. A copy of all documents or instruments which are pertinent to or the basis of the proceeding shall be mailed to the last known address of the respondent.

11.7(2) *Form of an appearance.*

a. The appearance shall show venue as “BEFORE THE BOARD OF EDUCATIONAL EXAMINERS” and shall be captioned “APPEARANCE.”

b. The appearance shall show the following information:

- (1) The name, address and telephone number of the respondent.
- (2) That the respondent will submit an answer within ten days after the filing of the appearance unless granted an extension by the board.

c. The board may, upon good cause shown, grant the respondent additional time in which to file an answer.

11.7(3) *Form of answer.*

a. The answer shall show venue as “BEFORE THE BOARD OF EDUCATIONAL EXAMINERS” and shall be captioned “ANSWER.”

b. The answer shall contain the following information:

- (1) The name, address and telephone number of the respondent.
- (2) Specific statements regarding any or all allegations in the complaint which shall be in the form of denials, explanatory remarks, or statements of mitigating circumstances.
- (3) Any additional facts or information the respondent deems relevant to the complaint and which may be of assistance in the ultimate determination of the case.

282—11.8(272) Action by the board prior to hearing.

11.8(1) *Notice of hearing.* The chair or designee shall send a notice of hearing to the complainant and the respondent by certified mail with return receipt. The notice shall contain the following information:

- a. The date, time and place of hearing.
- b. A statement that the party may be represented by legal counsel at the hearing.
- c. A statement of the legal authority and jurisdiction under which the hearing is to be held.
- d. A reference to the statutes and rules involved.
- e. A short and plain statement of the matter asserted.
- f. A statement requesting the respondent within a period of ten days after receipt of the notice of hearing to:

- (1) Acknowledge receipt of the notice of hearing.
- (2) State whether or not the party will be present at the hearing.
- (3) State whether the party will require an adjustment of date and time of the hearing, and
- (4) Furnish the board with a list of witnesses intended to be called.

g. A statement of voluntary waiver of formal hearing which may be signed by the respondent who wishes voluntarily to surrender the practitioner’s license under 11.2(2) with the knowledge that the action will result in the permanent revocation of the license. Such a waiver will not preclude an appeal following the board’s proposed or final decision as outlined in 11.13(272,17A).

11.8(2) *Filing and serving exhibits prior to hearing.* In any proceeding where detailed or complicated exhibits are to be used, the board chair or designee may require any party to file and serve copies of exhibits or other necessary information within a specified time in advance of the hearing in order to enable the other parties and the board to study same and prepare cross-examination with references thereto.

11.8(3) *Subpoenas—discovery.* In connection with the initial inquiry set forth in 11.5(272), the board is authorized by law to subpoena books, papers, records and any other evidence to help it determine whether it should institute a contested case proceeding (hearing). After service of the hearing notification contemplated by 11.8(272), the following procedures are available to the parties in order to obtain relevant and material evidence:

a. Board subpoenas for books, papers, records, and other evidence will be issued to a party upon request. Such a request must be in writing. Application should be made to the board office specifying the evidence sought. Subpoenas for witnesses may also be obtained.

b. Discovery procedures applicable to civil actions are available to the parties in a proceeding under these rules.

c. Evidence obtained by subpoena or through discovery shall be admissible at the hearing if it is otherwise admissible under 11.11(272). In discovery and subpoena matters the parties shall honor the rules of privilege imposed by law.

d. The evidence outlined in Iowa Code section 17A.13(2) where applicable and relevant shall be made available to a party upon request.

e. Except to the extent otherwise provided by law, parties are responsible for service of their own subpoenas and payment of witness fees and mileage expenses.

282—11.9(272) Motions.

11.9(1) No technical form for motions is required. However, prehearing motions must be in writing, state the grounds for relief, and state the relief sought.

11.9(2) Any party may file a written response to a motion within ten days after the motion is served, unless the time period is extended or shortened by rules of the agency or the presiding officer or the presiding officer's designee.

11.9(3) The presiding officer or the presiding officer's designee may schedule oral arguments on any motion.

11.9(4) Motions pertaining to the hearing, including motions for summary judgment, must be filed and served at least ten days prior to the date of hearing unless there is good cause for permitting later action or the time for such action is lengthened or shortened by rule of the agency or an order of the presiding officer.

282—11.10(272) Continuances. A party has no automatic right to a continuance or delay of the board's hearing procedure or schedule. However, a party may request a continuance of the executive director no later than seven days prior to the date set for hearing. The executive director shall have the power to grant continuances. Within seven days of the date set for hearing, no continuances shall be granted except for extraordinary, extenuating or emergency circumstances. In these situations, the executive director shall grant continuances after consultation, if needed, with the chairperson of the board or the attorney representing the board. A board member shall not be contacted in person, by mail or telephone by a party seeking a continuance.

282—11.11(272) The hearing.

11.11(1) *Opening and closing statements by parties.* At the commencement of the hearing, each party, either in person or by counsel, shall have the opportunity to present a written and oral opening statement which may summarize the party's position and evidence to be introduced. At the conclusion of the hearing, each party shall, either in person or by counsel, have the opportunity to present both a written and an oral closing statement which may include a summary of the evidence and testimony received.

11.11(2) *Introductory statement to witnesses.* Before giving testimony, each witness shall be informed of the board membership present (hearing panel), of the identity of the primary parties or their representatives, and of the fact that all testimony is being recorded.

11.11(3) *Hearing panel—administrative law judge—presiding officer—role of board members at hearing.*

a. A hearing may be conducted before the full board or before a three-member hearing panel appointed by the board chair. A hearing may also be conducted by an administrative law judge in accordance with Iowa Code section 17A.11.

b. When a hearing is held before the full board or a three-member hearing panel, the board chair or someone designated by the chair shall act as the presiding officer. The presiding officer or the administrative law judge shall be in control of the proceedings and shall have the authority to administer oaths, to admit or exclude testimony or other evidence and to rule on all motions and objections.

c. The presiding officer or an administrative law judge, at the discretion of the board, and other board members have the right to conduct an examination of all witnesses called at the time of the hearing. Direct examination and cross-examination by board members are subject to objections properly raised in accordance with the rules of evidence noted in 11.9(272).

11.11(4) *A record of proceedings.* The hearing chair will ensure that a record of the hearing proceeding is maintained by one of the following methods:

a. Electronic recording,

b. A competent stenographer, or

c. A certified court reporter. However, the cost of preparing a transcript for the complainant or respondent shall be paid by the party requesting it, or costs jointly shared between the respondent and the complainant upon prior agreement. Parties who request that a hearing be recorded by certified shorthand reporters rather than by electronic means shall bear the cost of the recordation, unless otherwise provided by law. The recording or stenographic notes or transcription thereof shall be kept for a period of at least five years.

11.11(5) *Form of oath.* Whenever an oath is to be administered in any proceeding conducted by the board, the person taking an oath shall raise the right hand and swear or affirm to the following oath or affirmation: “Do you solemnly swear (or affirm) that the testimony (or evidence) you are about to give in the proceeding now in hearing, shall be the truth, the whole truth, and nothing but the truth?”

11.11(6) *Rules of evidence—documentary evidence—official notice.*

a. Irrelevant, immaterial and unduly repetitious evidence shall be excluded. A finding shall be based upon the kind of evidence upon which reasonably prudent persons are accustomed to rely for the conduct of their serious affairs and may be based upon such evidence even if it would be inadmissible in a jury trial. The presiding officer shall, however, give effect to the rules of privilege recognized by law and to any other applicable exclusionary rule imposed by statutory or constitutional provisions.

b. Objections to evidentiary offers may be made and shall be noted in the record. Motions and offers to amend the pleadings may also be made at the hearing and shall be noted in the record together with the rulings thereon.

c. Subject to the above requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be required to be submitted in verified written form.

d. Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available. Upon request, parties shall be given the opportunity to compare the copy with the original, if available. Accurate copies of the document offered at the hearing shall be furnished to those members of the board sitting at the hearing and to opposing parties.

e. Witnesses at the hearing, or persons whose testimony has been submitted in written form, if available, shall be subject to cross-examination by any party and by the board members, executive officer and legal counsel for the board as necessary for a full and true disclosure of the facts.

f. Official notice may be taken of all facts of which judicial notice may be taken and of other facts within the specialized knowledge of the board. Parties shall be notified at the earliest practicable time, either before or during the hearing, or by reference in preliminary reports, preliminary decisions or

otherwise, of the facts proposed to be noticed and their source, including any staff memoranda or data, and the parties shall be afforded an opportunity to contest the facts before the decision is announced unless the board determines as part of the record or decision that fairness to the parties does not require an opportunity to contest the facts.

11.11(7) Reserved.

11.11(8) *Legal counsel.* The board may appoint legal counsel to advise and counsel the hearing chair in the performance of duties under 11.8(272).

11.11(9) *Open hearing—space limitation.* The hearing is open to members of the public. For reasons of space limitation, however, the presiding officer may regulate attendance.

282—11.12(272) Final and proposed decisions—content—conclusiveness—confidentiality.

11.12(1) *Final decision.* When six or more members of the board preside over the reception of the evidence at the hearing, its decision is a final decision and shall be entered in the minutes.

11.12(2) *Proposed decision.* If the hearing is conducted by a three-member hearing panel or by an administrative law judge, a proposed decision will be issued.

a. The proposed decision shall be placed on the agenda of the next regular board meeting for review of the record and decision by the full board.

b. The board may affirm, modify, or vacate the decision or may direct a rehearing before a hearing panel or the board.

c. A proposed decision becomes final upon board approval.

11.12(3) *Content of decision.* A proposed or final decision shall be written or stated in the record and shall consist of the following parts:

a. A concise statement of the facts which support the findings of fact.

b. Findings of fact. A party may submit proposed findings of fact and, where this is done, the decision shall include a ruling on each proposed finding.

c. Conclusions of law which shall be supported by cited authority or reasoned opinion.

d. The decision or order which sets forth the action to be taken or the disposition of the case. The ruling may be any of the following:

(1) That the respondent be exonerated.

(2) That the respondent be warned or reprimanded.

(3) That the respondent's license be revoked or suspended for a specified term to be determined by the board.

(4) An order containing other appropriate actions within the board's jurisdiction.

11.12(4) *Confidentiality.* At no time prior to the release of the final decision by the board shall any portion of the whole thereof be made public or be distributed to any persons other than the parties.

11.12(5) *Notification of decision.* All parties to a proceeding shall be promptly furnished with a copy of any final or proposed decision or order either in person, by first-class mail, or by telephone, if necessary, to ensure that the parties learn of the decision or order first.

282—11.13(272,17A) Proposed decision—appeal to board—procedures and requirements. A proposed decision as defined in 11.12(2) becomes a final decision unless appealed in accordance with the following procedure:

11.13(1) A proposed decision may be appealed to the full board or a quorum thereof by a party to the decision who is adversely affected thereby. An appeal is commenced by serving on the board's chair, either in person or by certified mail, a notice of appeal within 30 days after service of the proposed decision or order on the appealing party. The appealing party shall be the appellant and all other parties to the appeal shall be the appellee.

11.13(2) Within 15 days after service of the notice of appeal, the appellant shall serve ten copies of the exceptions, if any, together with the brief and argument on the chair. The appellant shall also furnish copies to each appellee by first-class mail. Any appellee to the appeal shall have 30 days following service of exceptions and brief on the chair to file a responsive brief and argument. Except for the notice of appeal, the above time requirements will be extended by stipulation of the parties and may be extended upon application approved by a member of the board or its chair.

11.13(3) Oral argument of the appeal is discretionary but may be required by the board upon its own motion. At the times designated for filing briefs and arguments either party may request oral argument. If a request for oral argument is granted or is required by the board on its own motion, the chair or designee shall notify all parties of the date, time, and place. The board chair or a designated board member shall preside at the oral argument and determine the procedural order of the proceedings.

11.13(4) The record on appeal shall be the entire record made before the hearing committee, administrative law judge or chair.

282—11.14(272,17A) Motion for rehearing. Within 20 days after issuance of a final decision, any party may file an application for a rehearing. The application shall state the specific grounds for rehearing and the relief sought, and copies thereof shall be timely mailed to all other parties. The application shall be deemed denied if not granted within 20 days after service on the chair.

282—11.15(272,17A) Default.

11.15(1) If a party fails to appear in a contested case proceeding after proper service of notice, the presiding officer may, if no adjournment is granted, proceed with the hearing and render a decision in the absence of the party.

11.15(2) Where appropriate and not contrary to law, any party may move for default against a party who has requested the contested case proceeding and has failed to file a required pleading or has failed to appear after proper notice.

282—11.16(272,17A) Ex parte communications—bias. Ex parte communications and other matters tending to prejudice a contested hearing proceeding are prohibited by Iowa Code section 17A.17. In keeping with this provision, the following minimal requirements are applicable:

11.16(1) Individuals assigned to render a proposed or final decision or to make findings of fact or conclusions of law shall not communicate, directly or indirectly, in connection with any issue of fact or law, with any person or party, except upon notice and opportunity for all parties to participate. Such individuals may, however, communicate with members of the board and its chair and may have the aid and advice of persons other than those with a personal interest in, or those engaged in prosecuting or advocating in, either the case under consideration or a pending factually related case involving the same parties. In any case, where it becomes necessary to communicate with a party on matters noted above, notice shall be given to all parties, and a date, time and place set for a discussion of the matter.

11.16(2) Parties or their representatives in a contested case shall not communicate, directly or indirectly, in connection with any issue of fact or law in that contested case, with individuals assigned to render a proposed or final decision or to make findings of fact and conclusions of law in that contested case, except upon notice and opportunity for all parties to participate. Any prohibited communication shall be brought to the attention of the board chair so it can be included in the record of the case.

11.13(3) Any party to a contested hearing proceeding may file an affidavit alleging personal bias or other disqualification of any individual participating in the making of a proposed or final decision. The assertion as to disqualification will be ruled upon as a part of the record of the case.

11.13(4) For a violation of this rule, the board may hand down a decision adverse to the violating party; may suspend, censure or reprimand; and may reprimand or dismiss board staff members.

These rules are intended to implement Iowa Code chapter 272.

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